

# **ARIZONA JUDICIAL COUNCIL'S COMMITTEE ON SUPERIOR COURT**

## **DRAFT MINUTES For Meeting held Friday, January 25, 2002 Superior Court in Pima County 110 West Congress, Conference Room 945 Tucson, AZ**

### **MEMBERS PRESENT:**

Hon. Roger Kaufman, Chair  
Hon. Silvia Arellano  
Hon. James E. Chavez  
Hon. Bethany Hicks  
Hon. Douglas Holt  
Hon. Brian Ishikawa  
Hon. Gloria Kindig  
Hon. Cindy Jorgenson  
Hon. Kirby Kongable  
Mr. Gary Krcmarik  
Hon. Kenneth Lee  
Hon. John Leonardo  
Hon. Nancy Lewis  
Hon. Denise Lundin  
Hon. Leslie Miller  
Hon. Fred Newton  
Mr. Marcus Reinkensmeyer  
Mr. Don Stiles  
Hon. Nanette Warner  
Hon. Raymond W. Weaver, Jr.

### **STAFF:**

Theresa Barrett  
Helen Tallent

### **MEMBERS ABSENT:**

Hon. Mark Armstrong  
Hon. Michael Jeanes  
Hon. Monica Stauffer  
Mr. Charles W. Wirken, Esq.

### **GUESTS:**

Hon. George T. Anagnost  
Hon. Jeffrey Coker  
Hon. John Kennedy  
Hon. Patricia Noland  
Mr. Jeffrey Fine  
Ms. Debby Finkel  
Ms. Jennifer Greene  
Mr. Dennis Metrick  
Ms. Christine Powell  
Mr. Patrick Scott  
Ms. Kathy Waters  
Ms. Amy Wood  
Ms. Judy Bushong

## **I. WELCOME AND OPENING REMARKS**

Judge Roger Kaufman, Chair, called the meeting to order at 10:00 a.m. He welcomed everyone and thanked the Superior Court in Pima County for providing the Committee with meeting accommodations for their Tucson meeting. Judge Kaufman then acknowledged guests. All those present introduced themselves.

## II. APPROVAL OF MINUTES - September 14, 2001

The minutes from the September 14, 2001 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff. Copies of the revised minutes were provided for review at the meeting.

**MOTION:**       **To approve the revised minutes for the September 14, 2001 meeting as distributed. Seconded and passed. COSC-02-001**

## III. NEW BUSINESS

### A. Committee to Study Probation Officer Safety and Training: Final Report on Officer Safety

Ms. Kathy Waters, Director of the Adult Probation Services Division for the Administrative Office of the Courts (AOC), presented the final report on the Ad Hoc Committee on Officer Safety and Training. Ms. Waters provided a brief overview of the history leading up to the formation of the Ad Hoc Committee, established by Administrative Order #2001-32. She explained the Committee's purpose was to develop and make recommendations to insure the standardization of officer safety training, equipment and policies and procedures for probation departments statewide.

The Committee consisted of 27 voting members and was broad based in its representation. There were numerous Chief Probation Officers, Juvenile Court Directors, Judges, Managers, Trainers, Legislators, Probation/Surveillance Officers (both juvenile and adult) as well as Law Enforcement included in the membership. All meetings were open to the public and participation was encouraged and received.

To prepare the final report, Ms. Waters informed members research information was gathered from resources across the country, including but not limited to, The National Institute of Corrections, the American Probation and Parole Association and the National Association of Probation Executives. However, after completing their national research it was clear more information was needed on the demographic, training and equipment information for Arizona departments, as well as, the opinions of probation staff statewide.

Accordingly, a survey was drafted by the Committee to collect this information. Approximately 4,200 surveys were sent to staff. 2,086 surveys were returned and analyzed.

Ms. Waters noted the survey information proved to be very beneficial to the Committee as it began the process of developing its recommendations. The following is a summary of the Committee's findings:

#### **Safety Issues**

- < For the most part, respondents felt safe in their offices. The place they felt the least safe was going out into the field.
- < Some respondents felt there were inadequate weapons checks at their building entrances.

- < Some juvenile officers were concerned with inadequate locking systems on office equipment (i.e., file cabinets).
- < Regarding community safety issues most respondents were concerned about contacting offenders in high risk areas (i.e., out of the office). Generally, officers were not concerned about public places or even satellite offices as a lot of these offices are in police stations or court houses where security is in place.

### **Training Issues**

- < Results indicated the need for more training in regards to recognizing and diffusing dangerous situations. Although most respondents felt they could “recognize” a dangerous situation, a lot less felt they had the skills to “diffuse” those situations.
- < Adult and Juvenile Officers both felt that all of the training listed was inadequate, in particular training on Firearms, Unarmed Self Defense, and Impact Weapons. Ms. Waters pointed out that Pima is the only county that arms its officers. Accordingly it is the only county which currently offers firearms training.
- < Both Adult and Juvenile Officers felt additional training would be most useful in the following areas: High Risk Offender, Unarmed Self-Defense and Control, Safety Considerations for the Field, and Verbal Skills and De-escalation Techniques.

### **Equipment Concerns**

- < Less than half of all respondents felt they have adequate equipment.
- < Equipment most important to officer safety included: radios, dispatch and cell phones. Ms. Waters suggested this finding indicates when officer’s are out in the field they want some sort of contact with the home office.
- < Juvenile Officers included rubber gloves and first aid supplies as equipment important to officer safety.

### **Arming Findings**

- < 77% of respondents felt that Adult Officers should be allowed to carry handguns or have the option.
- < 68% of respondents felt that Juvenile Officers should be allowed the option to carry handguns.
- < 40% of all respondents felt the need to be armed.
- < In particular, respondents felt that officers should be armed when working with Warrants, Absconder Tracking and High Risk Caseloads.

Next, members were referred to the handouts included in their meeting materials delineating AJC’s actions related to the Committee’s report. Following a review of the Council’s recommendations, Ms. Waters reported the Committee’s “next steps.” She indicated the first step would be the submission of the code sections addressing Firearms Standards and Training to AJC in March. In June, the Personnel Policy code section and changes to Code Section 6-105: Duties and Responsibilities of Probation Officers will be presented to AJC and recommended for adoption.

Ms. Waters noted there is still work that needs to be done. This work falls under one of two areas: Policies and Procedures or Training. Policies and procedures issues will be addressed in code sections. Alternatively, the Committee has recommended establishing an advisory committee under the Committee on Probation (COP) to handle the training component. The advisory committee will be the working group that will make subsequent recommendations and continue the implementation of the Committee's recommendations. The advisory committee will also work in conjunction with the curriculum subcommittee of the Committee on Probation Education (COPE) to further develop standardized training, equipment and policies. Following the presentation, Judge Kaufman opened the floor to questions.

Gary Krcmarik asked whether the cost impact for the proposed training had been determined. Ms. Waters indicated a gap analysis had been conducted taking into consideration existing equipment. The figure arrived at to implement the equipment component ranged from \$900,000 to 1 million dollars. The training component was harder to put a dollar amount on. Based on Pima County's costs, preliminary estimates are between 2-3 million dollars. This amount is proposed to be spread out over the next two years. Ms. Waters indicated monies had been put aside in the adult probation services budget to get started however, she cautioned members the state budget crisis could impact this reserve.

Judge Kaufman thanked Ms. Waters for her succinct and helpful report.

## **B. Minute Entry Workgroup Report and Recommendations**

Following a brief introduction by Judge Kaufman, Co-Chairs, Hon. Denise Lundin, Clerk of the Court for Cochise County and Hon. Jeffrey Coker, Superior Court Judge, Coconino County presented the Minute Entry Workgroup's Report and recommendations.

Ms. Lundin began by explaining that the Clerk's Association spent a year examining statewide minute entry practices, and this effort culminated in the creation of the Minute Entry Reform Work Group under the umbrella of the Committee on Superior Court. She described the membership of the work group, that it met five times in the last year to examine current practices relating to minute entries, identify problems and suggest reforms. Chief Justice Zlaket had asked the group to examine whether minute entries could be eliminated.

Problems identified by the work group include: lack of shorthand skills, over-reliance on minute entries when other documents would be more appropriate, redundancy and lack of uniformity among divisions. Solutions identified include: distinguish minute entries from orders or notices, develop and use more forms in lieu of customized minute entries, change the culture at the courthouse to move away from reliance on minute entries, ask parties to provide their own notices and utilize technology where appropriate.

Among the committee members, consensus was strong that not all minute entries can be eliminated and that they are needed at the appellate level and elsewhere. Moreover, Chief Justice Jones's new strategic agenda includes processing civil cases in a more efficient manner, therefore, the time has come to get this accomplished.

Judge Coker then spoke on the judge's perspective on these issues. He introduced his remarks by reference to a common definition of insanity, "Doing the same thing over and over

again and expecting a different result.” This evokes the topic of minute entries, because what led to the creation of the reform work group was the recognition that things cannot continue as they have when it comes to minute entries, despite reluctance from the bench to see changes made in this area. He recalled that until a few years ago, the delays caused by minute entry practices in Coconino led to a situation where some minute entries were being sent out after the hearing date which was noticed in the minute entry. Judge Coker also stated that he opposes asking judges to fill out forms while on the bench, but he thinks there are other acceptable ways in which minute entries can be reformed to meet current needs.

In order to address these concerns, the reform work group looked at the purposes served by minute entries, and asked whether those goals can be met in a better way. It was suggested the recommendations will require changes in some courts, for example, the proposal that shifts the responsibility for drafting a judge’s orders made under advisement to a judicial assistant. It was noted while the proposals will seem like baby steps to some, to others they may seem impossible to accomplish. Nevertheless, it was reiterated that these reforms need to be made because the clerks no longer have sufficient resources to continue doing business in the same fashion.

Jennifer Greene, Court Specialist, Court Services Division, AOC, added that the work group also was following the minute entry reforms in Maricopa Superior Court, where the civil, criminal, juvenile and family courts have been experimenting with various alternatives. Ms. Greene indicated it is hoped that at least some of these reforms can be adopted in other counties or be made part of a statewide reform initiative.

Ms. Lundin then asked the committee for comments on the specific proposals. She stated that the work group’s proposals are broadly worded to permit elimination of paper records where possible, and to accommodate remote populations and their technological limitations. Ms. Greene noted some clerks were concerned about losing control over their record of the proceedings when a judge would transform a minute entry into an order, and in the process, add language that was not reflective of what happened during the proceeding. Accordingly, the first proposal is aimed in part at preventing this misuse of minute entries by creating a rule that draws a formal distinction between a minute entry and an order or notice. This new rule could be used to train judges to respect this distinction.

Judge Sylvia Arellano asked whether the work group was proposing that clerks would only draft minute entries and judicial assistants (J.A.’s) would draft orders. She explained that in her court, the juvenile judges sign every minute entry, because they are also serving the purpose of an order. The clerks prepare them, and if the J.A. had to be in the courtroom to take down her orders, that would be a burden. Judge Coker responded that the proposed rule is drafted in an intentionally flexible manner to accommodate the needs of individual divisions in terms of who prepares what. The minutes need to reflect an order or ruling announced during a proceeding, and a minute entry may or may not be signed by the judge. The distinction drawn by the proposed rule is not dependent upon who prepares the order or notice or whether the judge signs it, but when and where the order or notice was arrived at and under what circumstances (under advisement, in chambers versus announced during a hearing).

Judge Kaufman suggested that the proposed definitional rule be reworded to state that a minute entry will sometimes include orders and notices of hearings announced during a proceeding. In almost every case in which he sets a trial date, Judge Kaufman will have a minute entry drafted that includes the discussion he has had with counsel, it will give them notice of future dates and may include orders about what needs to be done.

Judge Coker agreed that he follows a similar practice. However, he explained, the reform work group is trying to help clerks get away from the practice in which a judge dictates a 5 page under-advisement ruling to a clerk and entitles it a minute entry. Ms. Lundin urged that if a judge decides out of court to change the date of a hearing, that should be a notice from the court and not a minute entry prepared by the clerk. Another process the committee hopes to foster is similar to the federal trial court system in which the lawyers submit notices or orders with copies. This is admittedly shifting the work to other parties, but it is also a necessary change.

Judge Gloria Kindig expressed concern about the amount of work her J.A. is already required to accomplish. Judge Coker acknowledged that in some courts J.A.'s should not be asked to draft notices or under-advisement rulings, and the cooperation of the clerk's office will be needed. It is a question of the local culture of the court. Judge Kindig stated that the Clerk in her court has already taken the position that certain work will not be performed by the Clerk's office, putting more onus on the judicial assistants. Judge Kindig expressed reluctance to give the clerk more ammunition in the form of the proposed definitional rule.

Hon. Patricia Noland, Clerk of the Court in Pima County, suggested that the situation with the Clerk in Navajo County would not necessarily be replicated in other counties if the proposals are adopted. In Pima, the clerks do what needs doing, as do other clerks' offices in other counties. The problem of minute entries stems from the fact that in the past, clerks were the people in the courthouse with shorthand skills, so they were enlisted to draft a lot of documents that do not fall within the definition of "minute entries." Clerks do not have these skills any longer; people just simply aren't learning shorthand any longer.

Judge Kaufman noted that an awful lot of what is included in a daily trial minute entry seems to be surplus and asked whether the work group had studied this phenomenon in particular. Ms. Lundin explained that the reform work group was aware of this, and is working on developing a curriculum for training judges not to expect this much detail in trial minutes in the future. Judge Coker stated that some judges rely on these detailed minute entries to remind them of what happened the day before or at the last hearing. Judges may have to start taking their own notes.

**MOTION: The Minute Entry Workgroup continue its current efforts until reform goals are accomplished. Motion seconded and unanimously approved. COSC-02-002**

*Following the vote, Ms. Lundin requested clarification as to whether the Committee's motion granted the work group the approval to move forward with the proposed recommendations. No objections were made.*

### **C. Procedure for Review/Approval of Forms**

Patrick Scott, Public Access Specialist, Court Services Division, AOC, informed members for the last four years numerous forms have been created for use by the court community and the public by the AOC Ad Hoc Self Service Center Forms Committee. This Ad Hoc Committee has 25 representatives from 14 counties and is comprised of judicial officers,

attorneys, court administrators, and clerks of court. A copy of the membership list was provided in the meeting materials.

In addition to the AOC ad hoc committee, Mr. Scott indicated many counties also have their own initiatives. For instance, Coconino has a collaborative effort with their Legal Aid Society to work on forms. At the same time, Maricopa has put together an extensive library of over 900 forms.

Currently, there is no official review by AJC standing committees of many of the forms used by Arizona courts. To address this issue it was suggested the procedure for approval of all forms needs to be formalized. This will ensure adequate input is being provided and that the needs of the court and public are being met. Moreover, if there are problems with a particular form, a formalized review process will assure issues are addressed and the revised form is routed back to the AOC for statewide dissemination.

Mr. Scott referred members to the proposed motion provided in their meeting materials. He explained this motion basically recommended all forms created by the AOC Self Service Center Forms Committee be presented to the appropriate AJC standing committees prior to being placed on the web or distributed to the public. Furthermore, this recommendation suggests the Committee on Superior Court create a subcommittee to review all superior court forms developed by the AOC Self Service Center Forms Committee before presentation to the full committee.

Following Mr. Scott's overview the floor was opened for discussion. Comments and questions included:

- < It was noted the AOC Self Service Center Forms Committee already includes a sizeable number of judges which review the proposed forms. There appears to be sufficient judicial review with current process.
- < To clarify the potential volume of forms the Committee would be reviewing, Mr. Scott reported ninety-four forms had been approved by the Ad Hoc Committee to date. Another eighty-nine forms are pending review.
- < Judy Bushong, Chair, Self Service Center Forms Committee, indicated the Committee has made revisions and modifications to previously approved forms which were deemed confusing in order to make them more "user friendly." Ms. Bushong provided several examples of the Committee's work in this area.

Following discussion, Judge Kaufman sought a second to the recommended motion. There was no second. Judge Kindig then offered an alternative motion for consideration.

**MOTION: All superior court forms developed by the AOC Self Service Forms Committee come to the full Committee on Superior Court for approval prior to the forms being submitted to AJC. Motion seconded. Motion failed by a vote of 5-14-0. COSC-02-003**

*Following the vote, no further action was taken on this report*

#### **D. Post Trial Judge/Jury Contact**

Judge Kaufman shared with members that for 8 ½ years he had conducted his own personal research on juries. He did this by giving each juror in a civil trial a written questionnaire which asked various open ended questions regarding the trial proceedings. Additionally, he indicated he often spoke with jurors after trials who had questions. He received invaluable information from these questionnaires and from the jurors. In turn he shared a lot of this information, without attribution, with lawyers in the course of trial management conferences. However, this all changed with the issuance of the Arizona Supreme Court Judicial Ethics Advisory Opinion 01-01 which prompted him to discontinue the aforementioned jury contacts altogether. Following his personal account, Judge Kaufman turned over facilitation to Judge Fred Newton.

Judge Newton began by providing a brief history on how the issue of whether talking to juries following a trial was appropriate arose. He followed by sharing the general practice found in rural counties prior to the October opinion. He explained that in rural counties, for the practical reason that rural judges are elected and jurors are their constituents, most rural judges would meet with the jury to thank them. Out of a growing concern that a judge would be charged with inappropriate ex parte communications, a request to review of the issue of post trial judge/jury contact was made to the Judicial Ethics Advisory Committee.

Judge Newton stressed the importance of members discussing this opinion with their fellow judges to ensure their bench is aware of the findings. Judge Newton then provided a summary of the two issues addressed in the opinion, beginning with a review of the conditions that must be met before a judge meets with a jury after a trial. The three limitations cited included:

- (1) **Notice must be given.** Specifically, counsel for all parties should be informed of the judge's intention to meet with the jurors and given an opportunity to be present, or to request that the meeting be on the record, or both.
- (2) **Judges must indicate what can and cannot be talked about up front with jurors.** This means the judge must admonish the jurors before the meeting specifying what is appropriate to talk about.
- (3) **Judges must discourage discussion of deliberations.** Basically, what jurors have talked about in the jury room needs to stay there. Specifically, the judge must expressly and firmly prohibit any discussion of the jury's deliberations.

Regarding the second issue of whether the court may issue a certificate to jurors in recognition of their service, the opinion does allow a judge to continue this practice as long as the letter/certificate is limited strictly to an expression of appreciation for jury service. Furthermore, it must also be routinely sent as a matter of general court policy. Judge Newton suggested that if only one or two judges are providing letters/certificates and others on the bench are not, the ones that do may be deemed in violation of the advisory opinion.

Judge Newton indicated, like Judge Kaufman, he no longer speaks to jurors after a case as a result of the restrictions delineated in the recent advisory opinion. Although the opinion may not be binding, he reiterated the need to exercise caution when speaking to jurors after a trial. He also expressed his strong reservations regarding sending out jury questionnaires as he is concerned they could be perceived in violation of the opinion as well.



To avoid any appearance of impropriety, Judge Newton recommended the Court Administrator's Office send out all jury exit surveys. This would remove the judge from the information gathering process. Additionally, he suggested that the AOC design a standard jury exit questionnaire to be used by all courts.

The following is a summary of the comments made by Committee members.

- < It was pointed out that the opinion does not differentiate between civil and criminal juries. However, drawing a distinction between the two would be problematic since post trial motions occur in civil cases as well as criminal. Judges need to be careful when speaking with both types of juries.
- < Jurors often want to have their verdict validated. They want you to tell them they "did the right thing." This is prohibited.
- < Members were informed there is a standing statewide jury committee under AJC which is currently looking into various jury issues including jury appreciation and/or jury exit questionnaires. It was suggested that questions and/or comments should be directed to Theresa Barrett to forward to the Chair. Judge Kaufman, Judge Newton and Judge Arellano volunteered to review any juror exit surveys proposed for statewide use by this committee.
- < Disappointment was voiced regarding the limitations posed by the advisory opinion. Judges should be encouraged to continue to communicate with jurors to foster public understanding of their role in the jury system.
- < It was argued letters/certificates of appreciation do not need to be court-wide policy. Rather, to ensure compliance with the opinion, they simply need to be the general policy of the judge that sends them.
- < The opinion's guidelines hinder interaction between judges and jurors. Communication between the judge and jury is valuable. It enhances the jury experience for citizens and educates them about the jury process.
- < The best ambassadors for jury service are those who have served and had a positive experience. Cutting the process off after the verdict removes an opportunity to contribute a greater understanding of the functions of the judiciary.
- < Jurors are intimidated when the judge addresses them "on the record." This procedure makes jurors feel the judge is mad at them which in turn makes them feel bad about their jury experience.

The discussion of this topic concluded with members contemplating what action could be taken by the Committee that would address the need to balance ethical concerns while still providing room to acknowledge and validate juror's service.

**ACTION ITEM:** Judge Leonardo will draft a letter to the Judicial Ethics Advisory Committee addressing the concerns of the Committee regarding limitations of Opinion 01-01. Judge Newton and Judge Kindig will review the draft.

**Consideration of the draft by the full committee will be placed on the April agenda.**

*Prior to the break, Judge Kaufman announced that the Superior Court in Pima County had graciously agreed to cover the Committee's lunch expenses. He thanked Court Administration for their hospitality.*

**Break for lunch**

**E. ACJA Fee Deferral and Waiver Code Section Review/Approval**

Following the lunch break, AOC Court Revenue Specialist, Debby Finkel, presented the Arizona Judicial Code of Administration (ACJA) for Fee Deferral and Waiver. Ms. Finkel explained the proposed code was primarily a reformatting of the Administrative Order 2001-89 and the procedures adopted by the AO. Although there were no significant changes to the original order, Ms. Finkel indicated forms had been eliminated from the packet and will be adopted separately. She informed members this change would allow for speedier revision of forms.

**MOTION: Motion was made and seconded that the code be adopted as changed. Motion passed unanimously. COSC-02-004**

**F. Complex Litigation Committee**

Next, Amy Wood, Court Services Division, AOC, announced the establishment of the Committee to Study Complex Litigation. Ms. Wood referred members to the copy of Administrative Order No. 2001-122, included in the meeting materials, which delineated the Chief Justice's charges.

Ms. Wood reported the Committee's first meeting was held the day before (January 24) following the Annual Meeting of Chief Justices. Members heard presentations from Chief Judge Kaye, New York, regarding their commercial division and Chief Justice George, California, on their complex litigation program. Roger Warren, National Center for State Courts, also attended and provided information from a national perspective on the issue.

Based on the time line established by AO #2001-122, the Committee is scheduled to submit their final recommendations to AJC in June. Therefore, to generate feedback the complex litigation committee anticipates presenting a subsequent report to members at their April meeting. Alternatively, if time does not permit a formal presentation, recommendations may be routed either electronically or in hardcopy for comments.

**G. Proposed Rule Changes for Civil Traffic Violation Appeals and Criminal Appeals**

Following a brief introduction by Judge Kaufman, Honorable George Anagnost, Chair, Rules Subcommittee, Committee on Limited Jurisdiction Courts presented the proposed rule changes prepared and submitted by the Rules Subcommittee.

Judge Anagnost explained the Subcommittee's primary goal was to make the processing of cases under the Superior Court Rules of Appellate Procedure- Criminal and the Rules of Procedure in Civil Traffic Violations less cumbersome and more efficient. Specifically, efforts were aimed at simplifying the process for court staff and appellants. The Subcommittee worked for approximately one year on the revisions submitted for review.

Ultimately, Judge Anagnost indicated the changes would save time and money for both Limited Jurisdiction and Superior Courts by creating common definitions and generating standardized forms. He explained this was achieved by backing away the record preparation of an appeal case until it is fully perfected at the Limited Jurisdiction Court level which is consistent with the existing statute stating the method will be determined by the Rules of Procedure.

Judge Anagnost indicated that over the last six months in Maricopa County alone there were approximately 900 civil traffic appeals. Of these cases, over 50 % were eventually dismissed and remanded because the appellant failed to pay for the transcripts at the trial court level or did not file the required paperwork. Therefore, the time and costs incurred for preparing the record are wasted.

Judge Anagnost argued the Superior Court would benefit directly by approving the proposed changes as judges and staff would be assured that when a case enters the system it is indeed a real case in controversy. The changes promote a more efficient use of court time and resources. Moreover, they simplify the process for the appellant as they only need to deal with one court at a time in perfecting their appeal.

**MOTION: Motion was made that the proposed rule changes be approved as submitted. Motion seconded. Motion passed unanimously.  
COSC-02-005**

#### **H. Committee to Study Public Access to Electronic Court Records Report and Recommendations**

Honorable Patricia Noland, Clerk of the Court, Pima County, presented the Report and Recommendations of the Ad Hoc Committee to Study Public Access to Electronic Court Records. Ms. Noland indicated the Committee's task was outlined by the Chief Justice as being to examine and recommend whether and to what extent the Court should provide Internet access to court records.

The Committee was a very diverse group. It consisted of members from the bench, court administration, the media as well as representatives from the Executive and Legislative branches. The Committee was structured into four working groups: Potentially Sensitive Information, Rights and Liabilities, Practices and Procedures and Technology. These working groups each produced reports on their topic areas for consideration by the full committee. In addition to the members' own presentations, the Committee also heard from a variety of others who use court records and need to have access to them (i.e., the Arizona Civil Liberties Union, private investigators, attorneys, businessmen etc).

Ms. Noland explained the Committee focused on not only data dissemination policies in Arizona (i.e., Supreme Court Rule 123) but other states as well. They also looked at current

data gathering practices in Arizona courts and evaluated the public's expectations of privacy. For instance, what is the responsibility of the Court as the keeper of public records in providing access to the public? How does the Court balance the right of the public to access its records against the individual's right to privacy?

Ms. Noland began her review of the Committee's report by clarifying that their recommendations were based on the underlying assumption that court records would continue to be available to the public at the courthouse as they had always been. The Committee also wanted to make it clear their recommendations did not mandate that a court must provide Internet access to its records. Rather, they took the position that websites were to remain optional.

The following is a summary by topic of the recommendations offered as reasonable guidelines to consider if a court has a website and offers court records to the public via the Internet.

### **Judicial Data Gathering Practices**

The court should work towards protecting disclosure of the types of sensitive data (i.e., social security numbers, credit/debit card numbers, and financial account numbers) from case files. Specifically, the court needs to consider what it is asking for and whether it really is necessary. The Committee felt it was the Court's responsibility to develop a sensitive data form and require its use where applicable to protect sensitive data. Finally, the Court needs to educate the public regarding access to court records. Currently, the public does not understand that all case files are considered public information and accessible to everyone (Note: The exception being those that are sealed or deemed confidential).

### **Limitations on Internet Access**

In this area, the Committee felt information should be "phased-in" by case type. Initially allowing access to civil cases (not dissolution) and criminal cases, followed by family, juvenile and probate cases that are not confidential. Ms. Noland noted one exception for criminal cases would be that presentence reports should not be accessible. Again, the Committee felt that the Court was obligated to ensure that sensitive data stored in their case management databases was also blocked from public access. The Court should also prevent bulk data downloading by providing access to case information on a case-by-case basis only.

### **Administrative Appeal**

The Court needs to have a mechanism in place that facilitates the correction of data errors. The Committee recommended following the current administrative process for appealing the denial of access to court records. Basically, the process for correcting errors would mirror the administrative review of other public access related complaints.

### **Website Management**

The Court needs to offer a disclaimer notifying viewers that they are not responsible for the accuracy, timeliness, completeness, interpretation, or misuse of their records. Courts with

websites should also offer some type of glossary or other resource that will assist viewers to understand the terminology used and/or case information they are reading. Moreover, the Committee recommended the development of a single portal access. This is already occurring for some courts through the AOC website.

Jennifer Greene, AOC staff to the Committee, added that the aforementioned recommendations had been presented to AJC in March. She indicated AJC directed the Committee to circulate these recommendations to the appropriate standing committees and the community for comments. The Committee will also be looking at some specific areas in further detail, such as orders of protection and bulk data.

Ms. Greene noted that the Federal government had made the decision not to make criminal records available on the Internet. Nationwide courts are grappling with the same issues addressed in the Committee's report and struggling with adopting electronic access policies. As public reaction is not easy to assess Ms. Greene suggested the Supreme Court wants to take time to gauge how the Committee's recommendations will be received. Arguably, the savings realized from an operational standpoint by making court records available via the Internet may not be worth the potential damage to public trust and confidence in the judiciary if individuals perceive access as a violation of their privacy. Ms. Greene concluded by informing members they could expect to be provided with a revised version of the Committee's recommendations in the next year.

*To illustrate the application of the recommended guidelines, following the overview of the Committee's recommendations, Ms. Noland provided a brief demonstration of her office's website.*

## **I. Recognition of Service**

In honor of their dedicated service and in appreciation for their commitment to the Committee on Superior Courts members recognized: Judge Dawson (a founding member who gave 11 ½ years of service before retiring from the bench), Judge Jorgenson (who served for one year before becoming ineligible due to her appointment to the Federal bench) and Oren Thompson (for serving three years with distinction before resigning due to his wife's terminal illness).

Judge Kaufman then announced he had learned Oren Thompson recently lost his wife. He requested the minutes reflect the Committee's condolences and that members were thinking of him in his time of sorrow. There were no objections.

## **J. Strategic Planning Update**

Ms. Christine Powell, Strategic Planner, AOC, drew the Committee's attention to Chief Justice Jones strategic plan entitled "Justice for a Better Arizona." Ms. Powell indicated this document will form the backbone of where the Chief would like the Court to go in the next three years.

Ms. Powell began her update by providing a brief overview of how the document was developed. She explained that during the process, the court reached out to a wide variety of individuals using the court system in an effort to identify what the main issues Arizona courts should be focusing on to improve public trust and confidence. Numerous focus groups were conducted as well as meeting with all the AJC standing committees. The

information gathered was brought to AJC in June, at which time the tedious process of prioritizing which issues would be included in the Court's strategic plan was undertaken.

Ms. Powell noted while the plan included a number of ongoing initiatives carried forward from "Justice 2002" it also includes several new projects. Ms. Powell then reviewed the plan with the Committee paying particular attention to the new projects contained in the plan and those areas which the Chief is particularly interested in giving attention to in coming years. The topics included: Probate, Officer Safety, Self Represented Litigants, Court Interpreters, Limited Jurisdiction Reform, Centralized Collections, Family Courts, Re-engineering Civil Case Processing and Improving the Legal Profession by working closely with the State and County Bar Associations.

Ms. Powell informed members the document is still a "work in progress" and the Chief is still fleshing out his priorities. Accordingly the Committee's input would be welcomed. She encouraged members to look over the plan and identify issues they might want to address in future meetings.

The following is a summary of member's comments and the issues identified for further discussion.

- < Judge Arellano would like to address lack of uniformity in the use of interpreters. She informed members the Arizona Minority Judges Caucus embarked on studying the issue of access to the court last year and has drafted a report addressing the need for qualified interpreters. Judge Arellano offered to present this report to the Committee for consideration. Judge Kindig added she would like to see less common languages, such as Native American and sign language, included in this discussion as well. Judge Kindig informed members she is working to have a 1½ hour session addressing interpreter issues faced by the court included at next judicial conference. It was also noted that Jennifer Greene, AOC, is currently working on a telephonic court interpreter project as a possible alternative to having interpreters in the court. Additionally, Dennis Metrick, AOC, indicated the Court Services Division is also researching different types of interpreter testing and certification programs and has put together a tentative plan for statewide implementation.

**ACTION ITEM:** Christine Powell agreed to meet with AOC staff to put together background information for the Committee to study on interpreter problems and possible solutions.

- < Judge Warner informed members the Children's Action Alliance is currently looking at the recent changes occurring in Juvenile Justice System. She suggested that the Committee should wait on addressing juvenile issues until their research has been completed.

**ACTION ITEM:** Judge Warner will keep the Committee apprized of the Children's Action Alliance efforts.

- < Judge Weaver would like to work on simplifying child support calculations.

**ACTION ITEM:** Information on how Arizona's current child support calculations were established will be compiled. Megan Hunter, Family Law Unit, AOC, will be invited to present alternatives to Arizona's current process.

- < Judge Leonardo indicated he would like to address the Court's responsibility for increasing attorney competence. Specifically, what is a judge's responsibility for addressing attorneys' actions in court? Judge Kindig suggested the Committee should also discuss paralegal competence (i.e., unauthorized practice of law). Is it the Court's responsibility to protect the public (i.e., pro se litigants) from paralegals who are charging for unuseable work products?

**ACTION ITEM: The issue of the court's responsibility regarding attorneys' actions in court and paralegal's competence will be placed on the Committee's next agenda for further discussion.**

- < Judge Chavez suggested a discussion of Court financing and/or how to better finance courts.
- < Judge Holt requested the Committee conduct a brainstorming session to identify solutions to problem faced by rural counties regarding lack of judges available to handle conflict cases.

**ACTION ITEM: Options used by other states will be compiled for members consideration. This issue will be placed on the next agenda for further discussion.**

**PLAN OF ACTION: Approximately two hours will be set aside for strategic planning at the Committee's next meeting. Copies of the minutes from prior strategic planning sessions will be distributed to all members. Members should contact either Theresa Barrett or Judge Kaufman with any additional issues they wish to have included in the proposed strategic planning session.**

#### IV INFORMATION ITEMS

Theresa Barrett, Court Specialist, AOC, advised members they should have received an email from Karl Heckart, Chief Information Officer, AOC, regarding the judicial department's new public access web site. Ms. Barrett encouraged Committee members to view the test site at <http://supreme7/publicaccess> and direct comments to the AOC Support Center via email or phone. She referred the Committee to a copy of the original email provided in their meeting materials for specific contact information. Ms. Barrett informed the Committee the new web site was scheduled to go live on January 31, 2002. Therefore, comments should be submitted as soon as possible to allow time for consideration and/or incorporation.

Next, Ms. Barrett reminded members that every Friday until the legislative session ends, two conference calls will take place between the Administrative Office of the Courts and court personnel statewide to solicit comments on pending legislation and how it may affect the courts. Like the prior year, calls will be divided between the limited jurisdiction courts at noon and superior and appellate courts at 1:00 p.m. On the morning of each Friday, a list of bills to be discussed will be emailed to each participant. Ms. Barrett indicated that all committee members will be included on this distribution. The number to call to participate is (602)542-9000.

Ms. Barrett concluded with the announcement that Helen Tallent had received a promotion since the Committee's last meeting and would no longer be the primary contact for Committee business matters. Although she would still be serving as support staff at meetings, all questions regarding future meetings should be directed to Pat Hernandez either by email at [phernandez@supreme.sp.state.az.us](mailto:phernandez@supreme.sp.state.az.us) or phone at (602)542-9585.

**V. SCHEDULE NEXT MEETING DATE/PLACE**

**The next meeting will be held on Friday, April 26, 2002 at 10:00 a.m.** The meeting location is the State Courts Building, 1501 W. Washington, Conference Rooms 345 A & B.

**VI. CALL TO THE PUBLIC**

No respondents.

**ADJOURNMENT**

The meeting was adjourned at 1:50 p.m.